

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1025

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

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Docket No. 77-1025

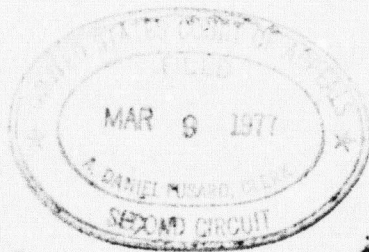
UNITED STATES OF AMERICA,
Plaintiff-Appellee

vs.

NIKOLAS PANTELEAKIS,
Defendant-Appellant

On Appeal From The United States District Court
For The District Of Vermont At Criminal
Action No. 76-9-1

APPENDIX FOR APPELLANT, NIKOLAS PANTELEAKIS



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA)
) CR 76-9
)
) 18 U.S.C. Sections
NIKOLAS PANTELEAKIS, a/k/a) 2314, 2315, 371, 2
Nick Pontel and WILLIAM SCOTT)

COUNT I

The Grand Jury charges:

On or about December, 1974, NIKOLAS PANTELEAKIS a/k/a Nick Pontel and WILLIAM SCOTT, the defendants, unlawfully, willfully and knowingly did receive, conceal, store, barter, sell and dispose of goods, wares, securities and merchandise, that is, United States savings bonds and shares of stock in the Western Pennsylvania National Bank of a value of more than \$5,000.00, which were moving as, were a part of, and constituted interstate commerce from the State of Pennsylvania to the State of Vermont, knowing the same to have been stolen, converted and taken by fraud in violation of Sections 2315, 2, Title 18, United States Code.

COUNT 2

The Grand Jury further charges:

On or about the 8th day of January, 1975, NIKOLAS PANTELEAKIS, a/k/a Nick Pontel and WILLIAM SCOTT, the defendants, unlawfully, willfully and knowingly did transport in interstate and foreign commerce from the State of Vermont to the Province

of Quebec, Canada, stolen goods, wares, securities and merchandise, that is, United States savings bonds and shares of stock in the Western Pennsylvania National Bank of a value of more than \$5,000.00, knowing the same to have been stolen, converted and taken by fraud; in violation of Sections 2314, 2, Title 18, United States Code.

COUNT 3

The Grand Jury further charges:

From on or about October 1, 1974 up to and including April 1, 1975, in the District of Vermont and elsewhere, NIKOLAS PANTELEAKIS, a/k/a Nick Pontel and WILLIAM SCOTT, the defendants, and John Winston Lavers and Larry Thibeault, named herein as co-conspirators, did combine, conspire, confederate and together agree with each other and with other persons to the grand jury known and unknown to commit offenses against the United States, to wit, to violate Sections 2314 and 2315 of Title 18 of the United States Code.

It was a part of the conspiracy that the defendants and co-conspirators would receive, conceal, store, barter, sell and dispose of goods, wares, merchandise and securities of the value of \$5,000.00 or more, knowing the same to have been stolen, converted and taken by fraud.

It was a further part of the conspiracy that the defendants and co-conspirators would transport in interstate and foreign commerce from the State of Vermont to the Province

of Quebec, Canada, goods, wares, merchandise, and securities of the value of more than \$5,000.00, knowing the same to have been stolen, converted and taken by fraud.

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the District of Vermont:

1. In or about December, 1974, NIKOLAS PANTELEAKIS, a/k/a Nick Pontel, WILLIAM SCOTT and Larry Thibeault met together in Brattleboro, Vermont.
2. In or about December, 1974, NIKOLAS PANTELEAKIS, a/k/a Nick Pontel, received \$500 from Art Strahan.
3. On or about January 8, 1975, John Winston Lavers traveled from Newport, Vermont to Ayer's Cliff, Quebec, Canada.

A TRUE BILL

/s/ Donald J. Peele
Foreman

GEORGE W.F. COOK
United States Attorney

By: /s/ Jerome F. O'Neill
Assistant U.S. Attorney

January 29, 1976
Rutland, Vermont

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

United States of America)	
)	Criminal Action
vs.)	
)	No. 76-9-1
Nikolas Panteleakis)	
a/k/a Nick Pontel)	

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and the instructions of the law from the Court. The Government submits to you, however, unequivocally, that as to the details as to who was standing in the office and not who wasn't,, but the evidence is Nick Panteleakis was a participant. On the basis of that participation, we submit to you he is guilty of each count in the indictment.

THE COURT. We'll proceed to charge the jury.

DEPUTY CLERK CURRAN. The crier will make proclamation for strict silence while the Court delivers the charge to the jury.

(The proclamation was duly given by Chief Law Clerk Michael Goldsmith.)

THE COURT. Ladies and Gentlemen of the jury. I am going to appoint Mr. Martin as your foreman in this case.

This case is a criminal proceeding brought by the United States against Nikolas Panteleakis, also known as Nick Pontel. The grand jury indictment, in substance, charges the defendant in three counts as follows:

Count I charges that on or about December, 1974, Nikolas Panteleakis, also known as Nick Pontel, the defendant, unlawfully, willfully and knowingly did receive, conceal, store, barter, sell and dispose of goods, wares, securities and merchandise; that is, United States savings bonds and shares of stock in the Western Pennsylvania National Bank of a value of more than \$5,000, which were moving as,

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were a part of, and constituted interstate commerce from the State of Pennsylvania to the State of Vermont, knowing the same to have been stolen, in violation of Sections 2315 and 2 of Title 18, United States Code.

Count II charges that on or about January 8, 1975, Nikolas Panteleakis, the defendant, unlawfully, willfully and knowingly did transport in interstate and foreign commerce from the State of Vermont to the Province of Quebec, Canada, stolen goods, wares, securities and merchandise; that is, United States savings bonds and shares of stock in the Western Pennsylvania National Bank of a value of more than \$5,000, knowing the same to have been stolen, converted and taken by fraud, in violation of Sections 2314 and 2, Title 18, United States Code.

Count III charges that from on or about October 1, 1974 up to and including April 1, 1975, in the District of Vermont and elsewhere, Nikolas Panteleakis, the defendant, and William Scott, John Winston Lavers and Larry Thibeault, named herein as co-conspirators, did combine, conspire, confederate and together agree with each other and with other persons to the grand jury known and unknown to commit offenses against the United States; to wit, to violate Sections 2314 and 2315 of Title 18, United States Code.

It was a part of the conspiracy that the defendant and co-conspirators would receive, conceal, store,

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barter, sell and dispose of goods, wares, merchandise and securities of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud.

It was a further part of the conspiracy that the defendant and co-conspirators would transport in interstate and foreign commerce from the State of Vermont to the Province of Quebec, Canada, goods, wares, merchandise and securities of the value of more than \$5,000, knowing the same to have been stolen, converted and taken by fraud.

Count III alleges there are three overt acts which were committed in furtherance of this alleged conspiracy. I am not going to read them to you at this time, as I will refer to them specifically and read them to you later in the charge.

Your verdict should not be influenced by the fact that the defendant was indicted for these offenses by the grand jury. As I have told you previously, an indictment is merely a formal procedural method of accusing the defendant or defendants of a crime preliminary to trial. Therefore, the indictment is not evidence of any kind against the defendant and does not create any presumption, or permit any inference of the defendant's guilt.

The defendant has pleaded not guilty to the charges contained in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact

presented by the allegations of the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice as to any party.

The law presumes a defendant to be innocent of a crime with which he is charged. This presumption of innocence continues throughout the trial down to the time in the jury room, if that time does arrive, when you are satisfied from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the crime charged. The law permits nothing but legal evidence presented before this jury to be considered in support of the charges against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the guilt of the defendant from all the evidence in the case.

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case, but first I have to call to your attention certain guides by which you are to evaluate the evidence.

The burden of proof is on the Government to prove each element of the charges against the defendant beyond a reasonable doubt. You cannot find a defendant guilty unless you determine that the Government has established by the evidence each and every essential element of the crimes charged against him beyond a reasonable doubt. However, to support a

verdict of guilty, you need not find every fact beyond a reasonable doubt. You need only find that the crime charged has been proven beyond a reasonable doubt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. By proof beyond a reasonable doubt, you are not to understand that all doubt is excluded. It is rarely possible to prove anything to an absolute certainty. A reasonable doubt means substantial doubt such as would make an honest and sensible and fair-minded person hesitate to act in a serious and important matter wherein ascertainment of the truth is conscientiously being sought.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. I stress to you that the law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence, and since the burden is always upon the Government to prove the accused guilty by proving beyond a reasonable doubt every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross examination of witnesses for the Government.

If, after impartial consideration of all the evidence you can candidly say that you are not satisfied of

the guilt of the defendant beyond a reasonable doubt, you should find the defendant not guilty. Conversely, if you are satisfied of his guilt beyond a reasonable doubt, you should find the defendant guilty.

There are two types of evidence which a jury may consider in determining whether or not a defendant is guilty as charged. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, which consists of proof of a chain of circumstances from which a conclusion regarding essential facts in the case may logically be drawn. Regardless of the nature of the evidence, the law requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case. On the other hand, if all the evidence in the case satisfies you beyond a reasonable doubt of the defendant's guilt, you should find him guilty.

Circumstantial evidence is legal and proper for you to consider, and you may convict the defendant upon this class of evidence alone if you are persuaded beyond a reasonable doubt of his guilt. To do so, however, the circumstances must be such as will lead the guarded discretion of a just and reasonable man to the conclusion that the crime charged has been committed and that the defendant is guilty of its commission.

You will recall that counsel in this matter

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have stipulated or agreed as to certain facts. You must accept such stipulations as evidence and regard the stipulated facts as proved.

Any testimony which has been excluded or which has been stricken from the record is not evidence in the case, and you will entirely disregard it in arriving at your verdict. Likewise, the arguments of the attorneys and any statements which they made in their arguments are not evidence and will not be considered as evidence by you. You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses, the stipulations of counsel, and all exhibits which have been received in evidence. It is your recollection of the witnesses' testimony and not the attorneys' statements as to what that testimony was which will control you in reaching your decision. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as are justified in the light of your own experience.

If you feel that witnesses differed as to what the facts were, it is generally better to reconcile the conflicting testimony, if you reasonably can, upon the theory that all of the witnesses intended to tell the truth. But if you cannot so reconcile the testimony, then you must determine

from all the evidence before you which of the witnesses is entitled to greater credit.

The credibility of the witnesses and the weight to be given their testimony are questions entirely for your determination. The law is that you are not bound to give the same weight, the same credit, or have the same faith in the testimony of each witness, but you should give the testimony of each witness just such weight, just such credit, and have just such faith in it as you think it is fairly entitled to receive. Consider the appearance of the witnesses on the stand; their candor or lack of candor; their feeling or bias, if any; their interest in the result of the trial, and the reasonableness of the testimony they gave. You should believe as much or as little of the testimony of each witness as you think is proper. You should weigh the testimony of the defendant as a witness in light of the tests that I have just given you, keeping in mind, however, that he is the defendant and has an interest in the result of the trial.

If you find that any of the witnesses in this action who are not parties made statements outside of court inconsistent with their testimony in court as to the facts involved in this case, you may consider these inconsistent statements only for the purpose of impeachment of the witness or evaluating his or her credibility, and not for the purpose of showing the same to be true.

A witness is presumed to speak the truth, but if you reach the conclusion that a witness in the case has willfully or deliberately given false testimony about any material fact, you may reject from consideration all of his testimony, or you may accept such part as you may deem true and disregard that which you may feel is false.

There has been evidence in this case concerning the previous criminal records of some of the witnesses. You may consider this evidence of a previous criminal record as bearing on the credibility of these individuals and the weight to be given their testimony. However, such evidence has no relation to the substantive crimes charged, and you are not to consider such evidence as bearing on the guilt or innocence of the defendant.

In this case, you have heard the testimony of a person who acted as a Government informer. The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by you with greater care than the testimony of any ordinary witness. You must determine whether, and to what extent, the informer's testimony has been affected by interest or by prejudice against the defendant.

You have also heard the testimony of several persons who could be considered as accomplices in some of the

crimes charged in that they testified to dealings with the defendant and others.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

If you find beyond a reasonable doubt that the defendant in this case used a name other than his own in connection with this offense as charged in the indictment, in order to avoid subsequent identification, that would be a fact from which you may, but need not, infer a consciousness of guilt on his part.

Keeping in mind the general guidelines that I have just given you, it now becomes the duty of the Court to instruct you as to the law applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law so given to the facts as you find them from the evidence. You will not be justified under your oath as jurymen in finding a verdict contrary to the law as the Court gives it to you.

It is the sole province of the jury to determine the facts in the case. The Court does not, by any instructions given to you, intend to persuade you as to how you should decide any question of fact. It is your duty to decide all the facts from the evidence. All parties have a right to expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict.

Count I of the indictment alleges that the defendant, Nikolas Panteleakis, willfully and knowingly received, concealed, sold or disposed of United States savings bonds and shares of stock of the Western Pennsylvania National Bank of a value of more than \$5,000, which were moving as interstate commerce from Pennsylvania to Vermont, knowing that the bonds and stock were stolen, in violation of 18 United States Code, Section 2315. Count I also charges that the defendant aided or abetted the commission of this offense in violation of 18 United States Code, Section 2.

Section 2315 of Title 18 provides in relevant part that whoever receives, conceals, stores, barter, sells,

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or dispose of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more which are moving as a part of interstate commerce knowing the same to have been stolen, shall be guilty of an offense against the United States.

Before you can convict the defendant of the crime charged in Count I, you must be satisfied beyond a reasonable doubt that each of three elements of the offense has been proved by the Government beyond a reasonable doubt. These three elements are as follows:

First: That on or about December, 1974 the date charged in the indictment, the defendant willfully and knowingly received, concealed, stored, bartered, sold, or disposed of shares of stock or savings bonds having a value of \$5,000 or more.

Second: That these shares of stock or savings bonds were moving as, or constituted interstate commerce.

Third: That the defendant knew that the shares of stock or savings bonds had been stolen.

With respect to the first element of the offense, the Government must establish beyond a reasonable doubt that the defendant received, concealed, stored, bartered, sold, or disposed of securities. You may find that the defendant received securities if you believe beyond a reasonable doubt that he accepted or took them into his possession or

control. The possession or receipt may have been actual or constructive. Actual possession or receipt means that a person knowingly has manual or physical control or custody of the securities; that is, the securities are in his personal possession. Constructive possession means that while the person does not have actual possession, he has the power to exercise dominion and control over the securities. You may find that the defendant concealed securities if you believe beyond a reasonable doubt that he hid them or secreted them from the knowledge or view of others.

The words "stores," "sells," "barters" or "disposes of" in the statute are used in their customary and usual sense. The word "securities" within the meaning of the statute includes any note, stock certificate or bond.

With respect to the first element, the Government must also establish that the defendant acted knowingly and willfully in receiving, concealing or selling the securities. An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or some other innocent reason. An act is done willfully if it is done knowingly and voluntarily and with the specific intent to do something which the law forbids. That is, with the purpose to either disobey or disregard the law.

The Government must also establish with respect to the first element of the offense charged in Count I that

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the securities in question had a value of \$5,000 or more. In determining value, you may consider the face value of the certificates and bonds which have been admitted into evidence, even if it would have been difficult or unlikely that the defendant or someone in a similar situation could have obtained full value for the securities.

With respect to the second element of the offense charged, the Government must establish that any bonds or stocks received, concealed or sold by the defendant were moving as, or constituted interstate commerce. The term "interstate commerce" means commerce between one state and another. The indictment specifically alleges that the securities were moving as interstate commerce from the State of Pennsylvania to the State of Vermont. This element is satisfied if you find that the securities were, in fact, transported or removed from Pennsylvania to Vermont, and that any receiving, concealing or selling of the securities in Vermont was incident to this transportation.

The interstate movement of securities does not necessarily cease to exist once the securities have been transported from one state and have arrived at their destination in another state. Of course, the securities do not continue indefinitely to remain in interstate commerce after the interstate transportation ends; but, after some period of time, depending upon what is done with the securities after the

transportation, the movement or location of the securities may become localized within a particular state. However, you may find that the securities involved in this case were still moving in interstate commerce at the time they were received, concealed, bartered, or sold in Vermont if you believe beyond a reasonable doubt that the receipt, concealment, barter or sale in Vermont were tied up with the transportation of the securities from Pennsylvania as to constitute a final or intermediate step in a continuous unlawful scheme.

In this regard, the Government need not prove that the defendant knew that the securities were moving as interstate commerce; it must establish only that the securities were still moving in interstate commerce at the time the defendant received, concealed or sold them, as I have just explained.

The third element that must be established beyond a reasonable doubt is order to prove the offense charged in Count I is the defendant's knowledge that the securities were stolen. In this regard, you may consider the circumstances surrounding the receipt, sale or concealment of the securities, if any; the secret or clandestine nature of these transactions, and any other evidence which may bear upon the defendant's knowledge. It is not necessary that the Government prove to a certainty that the defendant actually knew the securities were stolen. An inference of the existence of knowledge may be

drawn from evidence that the defendant was aware of a high probability that the bonds and securities were stolen, unless you find that the defendant actually believed the bonds and securities were not stolen. In addition, the element of knowledge may be satisfied by proof that the defendant deliberately closed his eyes to what otherwise would have been obvious to him. No person can disclaim knowledge merely by closing his eyes to facts which would otherwise be obvious. If you find from all the evidence beyond a reasonable doubt that the defendant had a conscious purpose to avoid learning the source of the stocks and bonds, you may infer that he had knowledge that the securities were stolen.

The word "stolen" as used in the statute means acquired or possessed as a result of some wrongful or dishonest act or taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the owner of the benefit of ownership.

Count I of the indictment also charges the defendant with violating 18 United States Code, Section 2 which is generally referred to as the aiding and abetting statute. An aider or abettor within the meaning of this act is one who assists the perpetrator of a crime.

There are two essential elements to this offense; some overt conduct and the intent to violate the law.

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With reference to the first element, to aid or abet the perpetrator of a crime requires that the defendant associate himself with the illegal venture; that he participate in it as something that he wishes to bring about; and that he seeks by his action to make it succeed. The defendant's mere association with those who committed the crime or the knowledge that the crime was to be committed are not sufficient to establish this offense. You, the jury, must be convinced beyond a reasonable doubt that the defendant was a participant or a substantial assistant in the commission of the crime, rather than merely a knowledgeable spectator.

With respect to the second element of the aiding and abetting offense, I instruct you that the offense which the defendant is accused of committing by Count I is one which requires specific criminal intent or a culpable purpose in order to find him guilty.

Thus, if you find that the defendant was a participant or substantially assisted in the offense alleged in Count I of the indictment, you must then decide beyond a reasonable doubt whether the defendant did so willfully and knowingly in a community of unlawful purpose with some other person. I have already defined the words "knowingly" and "willfully" for you. An aider or abettor is punishable the same as a principal or one who actually commits the crime. Thus, the intent needed to convict the defendant must be the

same as would be required to convict the principal.

In other words, an aider and abettor must have the same knowledge and intent required as the principal. Thus, proof of the defendant's knowledge that the securities had been stolen is necessary to convict him of aiding and abetting the offense charged.

Count II of the indictment charges that on or about January 8, 1975, the defendant willfully and knowingly transported in interstate and foreign commerce from Vermont to Quebec, Canada, stolen securities of a value more than \$5,000, knowing the same to have been stolen, in violation of 18 United States Code, Section 2, the aiding and abetting statute.

The Government does not allege, and there is no evidence in this case which would show that the defendant personally transported the bonds to Canada as charged in Count II. Consequently, in order to return a verdict of guilty as to Count II, you must find beyond a reasonable doubt that the defendant aided and abetted the commission of the offense charged in Count II, in violation of 18 United States Code, Section 2.

In other words, you must find that the defendant aided and abetted a person who transported stolen securities from Vermont to Canada, as charged in the indictment, knowing that the securities had been stolen, in violation of

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18 United States Code, Section 2314. In regard to the aiding and abetting offense, I refer you to the explanation which I gave you a few months ago.

Section 2314 of Title 18 provides in relevant part that whoever transports in interstate or foreign commerce, securities of the value of \$5,000 or more, knowing the same to have been stolen shall be guilty of an offense against the United States.

Three essential elements are required to be proved in order to find the defendant guilty of the offense charged in Count II;

First: That the defendant aided and abetted a person who willfully and knowingly transported securities in interstate or foreign commerce, as charged.

Second: That the securities had been stolen, and

Third: That the defendant and the persons who transported the securities knew that the securities had been stolen.

With reference to the first element of the offense, you must find that the person who was aided or abetted by the defendant traveled from the State of Vermont to the Province of Quebec, Canada on or about the date charged in the indictment, with the securities in his actual or constructive possession, as I have explained those terms to you earlier.

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You must also be satisfied that the person acted willfully and knowingly in transporting the securities as I have already defined those terms. Foreign commerce as used in this statute includes commerce with a foreign country.

The second element of the offense is that the goods were stolen at the time they were involved in interstate or international transportation. This element is satisfied by evidence which satisfies you that the securities had been unlawfully acquired, as I have previously explained. Also, as I earlier stated, the proof need not show who may have stolen the securities.

The third and final element of the offense charged in Count II is the knowledge of the defendant and the person transporting the securities that they were stolen at the time of transporting them from Vermont to Canada. As to the method of ascertaining the defendant's knowledge, I refer you to the instructions I have you as to Count I.

Count III of the indictment alleges that the defendant was a member of a conspiracy together with William Scott, John Lavers and Larry Thibeault to commit the offenses charged in Count I and II of the indictment, in violation of 18 United States Code, Section 371.

Section 371 is the federal conspiracy statute. It provides in part that if two or more persons conspire to commit any offense against the United States and one or more

of these persons does any act to effect the object of the conspiracy, they shall be guilty of an offense against the United States. In this case, the offenses alleged to be the object of the conspiracy are the knowing transportation, receipt, concealment and sale of stolen securities in interstate and foreign commerce, in violation of 18 United States Code, Sections 2314 and 2315.

A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish by criminal or unlawful means some purpose not in itself criminal or unlawful. The essence of a conspiracy is the unlawful agreement between the conspirators. But it is not necessary to find an express agreement, oral or written before you can find that a conspiracy existed. What must be shown, however, is that the members in some way impliedly or expressly came to a mutual understanding. This showing need not be made by direct evidence. It may be, and usually is, proved by circumstantial evidence.

It is not necessary for the Government to prove that the objects of the conspiracy were carried out, or that the conspiracy was successful. Conspiracy is punishable whether or not the intended offenses are committed. However, the Government must prove beyond a reasonable doubt that some overt act was committed in furtherance of the conspiracy. This need not be a criminal act but must be one which tends

to accomplish the plan or conspiracy and must be done in furtherance of the object or purpose of the conspiracy.

The offense of conspiracy is a crime when the unlawful agreement or combination is made, and any single overt act to effect the object of the conspiracy, if thereafter done by at least one of the conspirators, is attributable to all the conspirators, for the act of one conspirator done in furtherance of the conspiracy becomes the act of all, just as in our civil law, the act of one partner becomes the act of all partners. Consequently, if an overt act is performed by any co-conspirator, including but not limited to the defendant, then the conspiracy is complete.

Before you can convict the defendant of the crime of conspiracy to commit an offense or offenses against the United States, you must be satisfied beyond a reasonable doubt that each of three elements of the offense has been proved with respect to the defendant. They are as follows:

One: That the conspiracy charged in the indictment was willfully formed and was existing at or about the date alleged.

Two: That the defendant knowingly and willfully became a member of the conspiracy.

Three: That one of the conspirators thereafter knowingly committed at least one overt act in furtherance of the conspiracy.

The first element is that the conspiracy was willfully formed and existed at or about the time alleged in the indictment. The indictment alleges that the conspiracy commenced on or about October 1, 1974 and continued up to and including April 1, 1975. The Government need not prove that the conspiracy existed over the whole course of time which is alleged in the indictment. If you feel that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt, then the crime becomes complete, and the fact that the Government did not show it was being carried on as early or as long as the indictment says, in itself is not of any importance as far as the elements of the crime are concerned.

In this case, to satisfy the first element of the offense, the Government must establish beyond a reasonable doubt that the defendant conspired with one or more other persons to commit any or all of the offenses charged in Counts I and II of the indictment, pertaining to the transportation, receipt, concealment and sale of stolen securities in interstate and foreign commerce. These offenses are the objects of the conspiracy charged in Count III.

In order to constitute a violation of this conspiracy count, it is not necessary to show that the conspiracy was successful or that the intended offenses were completed. Furthermore, it is not necessary that the Government

prove that the conspiracy actually contemplated violation of each of these statutory offenses. It is sufficient for the purpose of Count III if you find beyond a reasonable doubt that it was a part of the conspiracy to commit any one of the alleged offenses.

You must find as the second element that the defendant knowingly and willfully participated in the conspiracy with the intent to further some object or purpose of the conspiracy. By knowingly and willfully, I mean that the defendant acted voluntarily and intentionally, with the intent being to disobey or disregard the law. By joining the conspiracy, I mean that the defendant became a member of it.

Mere association with other conspirators is not sufficient to make one a member of the conspiracy. Nor is it sufficient to establish that a defendant knew of the conspiracy, if he was not a participant in the conspiracy. The Government must establish that a defendant participated in the conspiracy with knowledge or at least some of its purposes and with intent to aid the accomplishment of its unlawful ends.

The third element of the crime of conspiracy is that one or more of the conspirators during the existence of the conspiracy knowingly committed at least one overt act in an effort to effect some purpose or object of the conspiracy. You must also find that this act, or acts, follow and

tend toward the accomplishment of the plan of the conspiracy.

Three such overt acts are alleged in the indictment:

First: In or about December, 1974, Nikolas Panteleakis, also known as Nick Pontel; William Scott and Larry Thibeault met together in Brattleboro, Vermont.

Second: In or about December, 1974, Nikolas Panteleakis, also known as Nick Pontel, received \$500 from Art Strahan, and

Third: On or about January 8, 1975, John Winston Lavers traveled from Newport, Vermont to Ayerscliff, Quebec, Canada.

In considering whether the offense of conspiracy has been committed, you should also be aware that the failure to take steps to prevent a crime from being committed, standing alone, is not sufficient to sustain a conviction of the crime of conspiracy, nor is the fact, standing alone, of presence and knowledge that a crime is being committed.

In considering the elements of the offense of conspiracy, as I have stated them above, you may consider all the evidence in the case. If you find that each of the elements of the offense of conspiracy has been proved beyond a reasonable doubt with respect to the defendant, then you must return a verdict of guilty.

Again, I want to suggest to you that while the

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law is for the Court, and you are to apply the law as given you in these instructions, the finding of the facts in this case is entirely for you. Whatever reference the Court has made to the evidence or pleadings is only for the purpose of making application of the principles of law to the issues in this case, and without any purpose of indicating in the least degree how the Court may think that the case ought to be decided on the facts. That is for you to determine.

The exhibits which have been admitted into evidence during the trial are for your consideration in your deliberations.

We will send a copy of the indictment to you in the jury room.

You must return a verdict of guilty or not guilty as to each count. Your verdict must be unanimous and will be delivered orally by your foreman in response to inquiries made by the Clerk.

(At the bench)

MR. O'NEILL. Your Honor, the only objection we have with respect to the charge, we thought there should be some language with respect to the causing of the transportation, iv Mr. Panteleakis was a participant and had reasonable cause to believe the securities would be so transported, with respect to Count II. We do not ask that the Court give that at this point in time unless Mr. Cleveland otherwise touches

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on that area.

MR. CLEVELAND. We have no objections to the charge.

THE COURT. All right.

(End of discussion at the bench)

THE COURT. Will the Marshal come forward and be sworn please.

(Deputy Marshal Paul Dingler was duly sworn by Deputy Clerk Curran.)

THE COURT. At this time, Mr. Pinkham, we are going to excuse you since your need for your services as an alternate are not necessary. We very much appreciate the time that you have spent on this case to date, and we are going to excuse you until next Tuesday, June 29th, I believe, at 9:30 a.m. Ladies and Gentlemen, you may now take the case. We'll stand in recess.

(Jury retired at 12:15 p.m.)

(In the courtroom without the jury at 3:45 p.m.)

THE COURT. We have an inquiry from the jury which reads as follows:

"One. If the defendant was coerced (black-mailed) into the conspiracy, can he be deemed a willfull participant.

"Two. If the defendant was felt to be coerced into the conspiracy and yet was felt to expect to share in the

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proceeds of the sale of the bonds, does this make him a will-full participant?"

MR. CLEVELAND. Would you read that again?

THE COURT. "If the defendant was coerced (blackmailed) into the conspiracy, can he be deemed a will-full participant?"

"Two. If the defendant was felt to be coerced into the conspiracy and yet was felt to share in the proceeds of the sale of the bonds, does this make him a will-full participant?"

MR. O'NEILL. Your Honor, I think there simply has not been any evidence to suggest remotely a blackmailing or coercion with respect to the conspiracy. There has been some implication of Mr. Panteleakis that he was being blackmailed into providing free rooms, but not into participation into the conspiracy.

MR. CLEVELAND. Your Honor, I feel that the general tenure of the situation is between Scott and Thibeault and Panteleakis that the coercion and/or blackmailing that might be evidenced goes to the very heart of whether they, in fact, formed an agreement. I would think it also is directly related to his ability to form specific intent required as a part and parcel of the proof of the crime.

MR. O'NEILL. Your Honor, I strongly think it would be a mistake to give the jury an instruction on that,

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but I really think they should be told there simply has been no evidence in this case of any coercion or blackmail with respect to participation in the conspiracy. We agree there were allegations of blackmail with respect to the rooms and so forth, but there is no way with respect to the conspiracy. There is simply no evidence on that. Mr. Panteleakis, himself, never made any claim he participated but was forced into it.

MR. CLEVELAND. I think I would disagree with the United States Attorney's way of phrasing that. Certainly, the conspiracy by its very nature has to be a general combination and agreement and those factors of influence against Mr. Panteleakis go directly to his ability to form the specific intent to be willfull.

MR. O'NEILL. There is no claim by Mr. Panteleakis here that he in any way, shape, form or manner participated in the conspiracy. He simply said he had nothing to do with the conspiracy. If he got on the stand and said "They made me put in some money; they gave me no choice, but to put me in there," no argument. But there is an argument as to coercion. There is no claim of coercion or blackmail in the conspiracy. There never was any throughout the trial.

THE COURT. I am inclined to agree with the Assistant United States Attorney, because the evidence just does not support any coercion as far as the conspiracy is con-

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cerned. Taking the evidence in the light most favorable to the defendant himself, which means solely from his own mouth, what evidence can you point to that he was coerced into the conspiracy?

MR. CLEVELAND. Your Honor, I am not addressing myself to that. I would agree there is no direct evidence at all that says he was coerced into the "conspiracy," but the jurors appear to be questioning specific intent and the willfull nature of his specific intent, and it appears clear from their request, to me, although the question is, if it is totally unclear, they want to know whether the influence of people surrounding Mr. Panteleakis goes to his ability to form specific intent to commit the crime. I think it clearly does.

MR. O'NEILL. The problem he is in insofar as participation in the crime, if he made a claim he had in some manner participated but really didn't want to, it would be a different situation, but he says "I didn't have anything to do with it, period."

MR. CLEVELAND. If he claimed he didn't participate and didn't want to, he participated.

MR. O'NEILL. Then he has argument for a coercion defense that he was coerced into it by their blackmailing, but he didn't say that. He said "I had nothing to do with it. I went into the room and told them to get out".

THE COURT. Is there such a thing as a coercion defense?

MR. O'NEILL. There is, your Honor. I want to look up the law with respect to it, but I believe that coercion has to be more than is set forth here, but I am not sure. I never had a case on it.

THE COURT. What do you mean "more than set forth here"?

MR. O'NEILL. A threat of imminent bodily harm--something like--before a coercion defense. For example, if someone puts a gun to my head and says "Go in and rob the bank," and I go, I think I have a coercion defense, but I think it has to be quite strong if I am not mistaken.

MR. CLEVELAND. Your Honor, I am not so much concerned about a particular defense of coercion. I think Mr. O'Neill states, as I recall, the general law about coercion, but it seems to me the jurors' inquiry is not specifically directed to a so-called coercion defense, but the formation of specific intent and its willfull nature.

THE COURT. What do you want the Court to tell the jury in answer to the specific questions that were asked?

MR. CLEVELAND. I would agree that the Court would say nothing.

THE COURT. Just ignore them?

MR. CLEVELAND. I don't know if there is a

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specific charge that covers it. If the Court feels that it has to explain the charge further, I would simply request that the Court reread the charge in relationship to specific intent and willfullness, and leave it at that.

MR. O'NEILL. I think the question goes beyond that. Their question, in some manner, seems to imply that they seem to think there might be some argument for coercion. Their question is not for repeat of the instructions. I don't think it can be less silent.

THE COURT. I think I will satisfy you both in that I will read the instructions as far as knowingly and willfully and intent is concerned, but I am also going to tell them, because I am satisfied in my own mind, there is no evidence in this case that the defendant was coerced into the conspiracy, and as I said earlier, this is taken on the basis of the evidence that was favorable to the defendant and right out of his own mouth. So I think I will tell them that, and I think I will probably read to them the language on knowingly and willfully.

MR. CLEVELAND. I have no objection as to what you stated if the Court further explains the jury is free to find that the circumstances surrounding what is alleged to be a conspiracy and those possible coercive acts are something that the jury may infer and construct the willfull nature of the defendant, or the ability to form the specific intent to

commit the crime.

MR. O'NEILL. You are, basically, trying to have it two ways, and you can't do that.

THE COURT. I am afraid you are asking me to get into the area I really can't get into. In other words, I really think you are asking me to instruct the jury in a posture that would take advantage of what seems to be their frame of mind based on their inquiries, which, unfortunately, I don't feel is justified because of the nature of the evidence, and I really don't think you can go any further than that, and, of course, if I am wrong, someone up there will be quick to point this out. That is the way I intend to handle it.

MR. CLEVELAND. I object to it, your Honor.

THE COURT. Yes.

(Jury entered the courtroom at 4:07 p.m.)

THE COURT. Ladies and Gentlemen. The Court has an inquiry from your foreman which reads as follows:

"One. If the defendant was coerced (blackmailed) into the conspiracy, can he be deemed a willfull participant?

Two. If the defendant was felt to be coerced into the conspiracy, yet was felt to expect to share in the proceeds of the sale of the bonds, does this make him a willfull participant?"

The answer I must advise you is as follows:

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There is no evidence in this case from which it can be found that the defendant was coerced into becoming a member of a conspiracy which may have existed, and for that reason the Court is incapable of answering your questions. I will, however, reread to you that portion of the charge which pertains to knowing and willfull doing of an act.

"An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or some other innocent reason. An act is done willfully if it is done knowingly and voluntarily and with the specific intent to do something which the law forbids. That is, with the purpose to either disobey or disregard the law."

Nor, Mr. Foreman, the Court doesn't know of any different or better way to respond to your inquiry than what we have just advised you.

FOREMAN MARTIN. How about the second question? Does that apply also to the second point?

THE COURT. I believe it does. Counsel approach the bench, please.

(At the bench)

THE COURT. We didn't specifically divide Questions 1 and 2 when we discussed it. I think we'll let it apply to 1 and 2.

MR. O'NEILL. The second question applies to coercion.

MR. CLEVELAND. Your Honor, did you read all your instructions relative to the willfullness and intent? I thought there was more.

THE COURT. There is a little more in the conspiracy part of the charge, but relates back to what I just read. I took this from the part where I read it to them out of Count I and---

MR. CLEVELAND. Your Honor, I feel that the jury should be aware that specific intent requires that the Government prove beyond a reasonable doubt that the intent has been formed in order to be guilty of conspiracy, or any of the other charges.

MR. O'NEILL. I think it is somewhat inherent from what the Court said. I am concerned on the Court focusing on that alone and read the part around that and put it in complete context. I think the language the Court read is the essential question.

MR. CLEVELAND. I disagree with you heartedly.

THE COURT. Actually, I just read my language as I gave in the conspiracy charge and it is substantially the same, so I will either read more of the charge on conspiracy or leave it at that point.

MR. CLEVELAND. I prefer you read more relative to the charge of conspiracy where the jury is aware that you have to find beyond a reasonable doubt that, in fact, form-

ed that specific intent; intent to willfully commit the act.

THE COURT. It is just as I read it. I can't read it any more than that unless I give pretty much the whole charge over again on conspiracy. Do you want that, if they want it?

MR. CLEVELAND. Yes, if they want it, I would like it, too, your Honor.

(End of discussion at the bench)

FOREMAN MARTIN. I don't know how much further to pursue this. There was testimony, I believe, by the defendant subject to some coercion insofar as turning the defendant into the local police, and we are essentially--I believe there is that testimony on the record, and that is the testimony we are struggling with right now.

THE COURT. Well, it is very difficult to know how far the Court can get into the question about which you are deliberating. However, I think the Court can indicate there was some testimony to that effect, but it did not pertain to anything having to do with the conspiracy, as far as these particular bonds or securities are concerned, and I don't know that I should go any further than that. However, if you wish and counsel are agreeable I do read to you again the language relative to conspiracy, if that is helpful.

FOREMAN MARTIN. All right.

THE COURT. "Count III of the indictment

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alleges that the defendant was a member of a conspiracy together with William Scott, John Lavers and Larry Thibeault to commit the offenses charged in Counts I and II of the indictment, in violation of 18 United States Code, Section 371.

"Section 371 is the federal conspiracy statute. It provides in part that if two or more persons conspire to commit any offense against the United States and one or more of those persons does any act to effect the object of the conspiracy, they shall be guilty of an offense against the United States. In this case, the offenses alleged to be the object of the conspiracy are the knowing transportation, receipt, concealment and sale of stolen securities in interstate and foreign commerce, in violation of 18 United States Code, Sections 2314 and 2315.

"A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish by criminal or unlawful means some purpose not in itself criminal or unlawful. The essence of a conspiracy is the unlawful agreement between the conspirators. But it is not necessary to find an express agreement, oral or written, before you can find that a conspiracy existed. What must be shown, however, is that the members in some way, impliedly or expressly, came to a mutual understanding. This showing need not be made by direct evidence. It may be, and usually is, proved by circumstantial evidence.

(Transcript, Page 397)

"It is not necessary for the Government to prove that the objects of the conspiracy were carried out, or that the conspiracy was successful. Conspiracy is punishable whether or not the intended offenses are committed. However, the Government must prove beyond a reasonable doubt that some overt act was committed in furtherance of the conspiracy. This act need not be a criminal act; but must be one which tends to accomplish the plan or conspiracy and must be done in furtherance of the object or purpose of the conspiracy.

"The offense of conspiracy is a crime when the unlawful agreement or combination is made, and any single overt act to effect the object of the conspiracy, if thereafter done by at least one of the conspirators, is attributable to all the conspirators, for the act of one conspirator done in furtherance of the conspiracy becomes the act of all, just as in our civil law, the act of one partner becomes the act of all partners. Consequently, if an overt act is performed by any co-conspirator, including but not limited to the defendant, then conspiracy is complete.

"Before you can convict the defendant of the crime of conspiracy to commit an offense or offenses against the United States, you must be satisfied beyond a reasonable doubt that each of three elements of the offense has been proved with respect to the defendant. They are as follows:

One: That the conspiracy*charged in the
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indictment was willfully formed and was existing at or about the date alleged.

Two: That the defendant knowingly and willfully became a member of the conspiracy.

Three: That one of the conspirators thereafter knowingly committed at least one overt act in furtherance of the conspiracy.

"The first element is that the conspiracy was willfully formed and existed at or about the time alleged in the indictment. The indictment alleges that the conspiracy commenced on or about October 1, 1974 and continued up to and including April 1, 1975. The Government need not prove that the conspiracy existed over the whole course of time which is alleged in the indictment. If you feel that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt, then the crime becomes complete, and the fact that the Government did not show it was being carried on as early or as long as the indictment says, in itself is not of any importance as far as the elements of the crime are concerned.

"In this case, to satisfy the first element of the offense, the Government must establish beyond a reasonable doubt that the defendant conspired with one or more other persons to commit any or all of the offenses charged in Counts I and II of the indictment, pertaining to the transportation,

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receipt, concealment and sale of stolen securities in interstate and foreign commerce. These offenses are the objects of the conspiracy charged in Count III.

"In order to constitute a violation of this conspiracy count, it is not necessary to show that the conspiracy was successful or that the intended offenses were completed. Furthermore, it is not necessary that the Government prove that the conspiracy actually contemplated violation of each of these statutory offenses. It is sufficient for the purpose of Count III if you find beyond a reasonable doubt that it was a part of the conspiracy to commit any one of the alleged offenses.

"You must find as the second element that the defendant knowingly and willfully participated in the conspiracy with the intent to further some object or purpose of the conspiracy. By knowingly and willfully, I mean that the defendant acted voluntarily and intentionally, with the intent being to disobey or disregard the law. By joining the conspiracy, I mean that the defendant became a member of it.

"Mere association with other conspirators is not sufficient to make one a member of the conspiracy. Nor is it sufficient to establish that a defendant knew of the conspiracy, if he was not a participant in the conspiracy. The Government must establish that a defendant participated in the conspiracy with knowledge of at least some of its

purposes and with intent to aid the accomplishment of its unlawful ends.

"The third element of the crime of conspiracy is that one or more of the conspirators during the existence of the conspiracy knowingly committed at least one overt act in an effort to effect some purpose or object of the conspiracy. You must also find that this act or acts follow and tend toward the accomplishment of the plan of the conspiracy."

I am not going to read the three overt acts which were set forth in the indictment, because you have the indictment before you.

"In considering whether the offense of conspiracy has been committed, you should also be aware that the failure to take steps to prevent a crime from being committed, standing alone, is not sufficient to sustain a conviction of the crime of conspiracy, nor is the fact, standing alone, of presence and knowledge that a crime is being committed.

"In considering the elements of the offense of conspiracy, as I have stated them above, you may consider all the evidence in the case. If you find that each of the elements of the offense of conspiracy has been proved beyond a reasonable doubt with respect to the defendant, then you must return a verdict of guilty," and conversely, of course, I would state if you find the elements of the offense of conspiracy have not been proved beyond a reasonable doubt with

respect to the defendant, then you must return a verdict of not guilty.

That is the charge on conspiracy, ladies and gentlemen, and I trust that you will be helpful in your future deliberations. We'll stand in recess.

(Jury retires at 4:17 p.m.)

(Jury returns to the courtroom at 4:40 p.m.)

THE COURT. Madame Clerk.

DEPUTY CLERK CURRAN. Mr. Foreman, has the jury reached a verdict?

FOREMAN MARTIN. It has.

DEPUTY CLERK CURRAN. What is the verdict as to Court I?

FOREMAN MARTIN. Guilty.

DEPUTY CLERK CURRAN. What is the verdict as to Count II?

FOREMAN MARTIN. Guilty.

DEPUTY CLERK CURRAN. And, what is the verdict as to Count III?

FOREMAN MARTIN. Guilty.

DEPUTY CLERK CURRAN. Is that the verdict of the jury?

FOREMAN MARTIN. It is.

DEPUTY CLERK CURRAN. So say all you ladies and gentlemen?

JURY. Yes.

(Transcript, Page 402)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA

:

V.

: Crim. Docket No. 76-9

NIKOLAS PANTELEAKIS aka/
NICK PONTEL

:

:

HEARING ON DEFENDANT'S MOTION
FOR NEW TRIAL AND DISCOVERY
OF NEW WITNESSES AND SENTENCING
OF DEFENDANT, HELD ON TUESDAY,
NOV. 9, 1976, at 9:30 a.m.
Hon. Albert W. Coffrin, Presiding.

APPEARANCES:

Jerome O'Neill, Esquire, Assistant United States Attorney,
Burlington, Vermont, on behalf of the plaintiff;

Peter M. Cleveland, Esquife of Shelburne, Vermont on
behalf of the Defendant.

(Transcript, Page 1)

THE COURT: All right, Mr. Cleveland, we have a Motion for a new trial filed by you, and I have read your Memo and also the Memorandum filed by the Government. However, is there anything you wish to address yourself to this Motion?

CLEVELAND: A few words, Your Honor.

THE COURT: All right.

MR. CLEVELAND: May it please the Court: There are two points that I feel important to take recognition of. One is that we would renew our objection filed at the time to the Court's instructions to the Jury when they had questions regarding coercion on the defendant. I would like to make a few points in this regard.

I note that the U.S. Attorney has indicated in his Memorandum that no such force existed, and I presume it was the Court's viewpoint also that no such evidence existed, or it would not have instructed the Jury the way it did. We have a contraview that evidence did exist, or sufficient evidence did exist for the Jury to make that determination, and that neither the Court nor the U.S. Attorney nor Defendant's counsel have the ability to take that prerogative away from the jury. We feel that the Court's instructions effectively did take that away

(Transcript, Page 2)

from the Jury, and that the point was of such import that the Jury did, in fact, request specific instructions surrounding that one incident and those facts, those of coercion, and that after the Court had instructed the Jury that the Jury returned a verdict within a very short time thereafter. We feel that in every respect the court essentially directed the verdict in that regard, and we would ask the Court, in fairness to the Defendant, that it grant a new trial for the Defendant on that basis.

The second ----

THE COURT: What evidence of coercion specifically did you refer to?

MR. CLEVELAND: Your Honor, there were two instances, as I recall, where the atmosphere of coercive activity against the Defendant were brought up. One in the Defendant's own testimony and one in Arthur Strohan's testimony where he indicated not only the Defendant had been harassed but he himself had been told by Larry Thibo that if he didn't cooperate by providing bail money that he would involve Arthur Strohan in the bonds.

We feel that those combined testimonies provided the atmosphere for which the Jury could have found that the Defendant was in a situation of

(Transcript, Page 3)

coercion from both Thibo and Scott.

THE COURT: Any testimony relative to coercion relative to your client pretty much had to do with payment of the motel bill.

MR. CLEVELAND: There were a number of instances, Your Honor. There was payment of the hotel bills; there was providing bond money for William Scott in Philadelphia, and there was the whole attitude of one Thibo and Scott to leave the premises.

Mr. Panteleakis testified that that was so; that he wanted them to leave and that he asked them to leave many times. Now this is further connected with testimony from a witness that goes to our second point on the Motion with Steven Themilis, but strictly on the evidence presented before the Court I feel that there were numerous instances, including Strohan's testimony, which indicated that he was, in fact, being coerced to do any number of things, and I feel it is within the Jury's province to so make that decision.

As to the second point: The discovery of new witnesses. Mr. Panteleakis has indicated to me that the reason he did not tell me about Mr. Stokes was the Mr. Stokes had an alcohol problem and he did not know what Stokes would say. He attempted to

(Transcript, Page 4)

contact Mr. Stokes a variety of times prior to the trial and was unable to locate him, and people who might be responding by his phone indicated that he was not living there. He has subsequently found out the reason for the indication that he wasn't there was Mr. Stokes was 'drying-out' so called, and didn't want to be bothered. So while he attempted to get hold of Stokes, was unable to, so until he finally saw him in prison in Wallingford after the trial Mr. Panteleakis indicated to me that the reason he did not know and believed that an attorney could not be a witness, and when he saw Mr. Themilis after the trial Mr. Themilis said 'why didn't you call me'-- mistaken that may be, but that is what he thought, and I believe that I have accurately described what Mr. Themilis would testify to, and I believe the United States Attorney and the FBI's report would back me up on that, that Mr. Themilis would, in fact, testify that Mr. Panteleakis did call him at or about the time of the involvement with the bonds, and say in essence, that Thibo and Scott were attempting to push him into, coerce into getting involved with the bonds, and that they were doing so by telling him that they would get involved with letting the Lowell

authorities know about his past bad check problems. I believe it was Mr. Thibo's advice to Nicky not to get involved and to make restitution, but he would testify that Nick was, in fact, being coerced and at the time that the bonds were -- that he was being sought to be involved with the bonds, and we feel that that testimony would be detrimental at a new trial on the merits. Thank you.

THE COURT: Mr. O'Neill?

MR. O'NEILL: Thank you, Your Honor. It seems there are three points here. First point is that the Court's instructions to the Jury with respect to coercion. Our position with respect to it is there was absolutely no evidence of coercion in any way tied into the defense, raised by the Defendant with this testimony. The Defendant simply never claimed that on the witness stand- We believe he is now attempting to raise that based on the Jury's question if he had been coerced at the time he could have decided about it. We believe the Court's instructions with respect to coercion, or the use, would be somewhat similar to entrapment instructions, which the Court only gives instruction on that defense when there is evidence of it, but one doesn't give instruction when there isn't any. We believe that the Court was

clearly correct in indication there was no evidence of coercion with respect to this. Certainly had the roles been reversed and the Jury going for that same theory, that the prosecution had not been proven by the Government, the Court would tell the Jury to disregard that. We believe the Court was correct with respect to that.

With respect to the Motion for a New Trial we raise serious questions and I think the question raised by Mr. Cleveland, and this he made clear, is that it is not newly discovered. With respect to Mr. Stokes, if anyone had asked where Mr. Stokes was during the trial I think we would have told him. Secondly as the case law indicates the newly discovered evidence must be more than cumulative, and the testimony of Mr. Stokes here, we would submit, would be equivocal at best, so we think Mr. Stokes is not even a factor for consideration.

The next factor is Mr. Themilis. One thing I noted, as I sat here this morning, is that the claim contained in the Motion for a New Trial of this situation with respect to Mr. Themilis is different from what I could observe from what Mr. Cleveland is representing. The Motion indicates Mr. Panteleakis briefly had forgotten about this

conversation, and it was only after contacting Mr. Themilis at a later date after the trial that Mr. Themilis himself brought up the past conversation with the Defendant and reminded him of it. Mr. Cleveland indicated Mr. Panteleakis told him he did not bring it up because he did not think an attorney could testify. We think it inconceivable a matter of issue would not be brought up, brought to Mr. Cleveland's attention for his consideration. In that respect we also think it is totally fabricated, by Mr. Panteleakis, perhaps to some extent with the assistance of Mr. Themilis. The reason we say that is there is no allegation during the trial, nothing whatsoever, -- only upon the Jury's question was this issue raised. We submit this is not newly discovered evidence. That the Court should not so consider it, and for that reason deny the Motion. We submit the facts here are similar, not in terms of literal facts, but the approach taken in *United States v. Edwards*, which is set out in our Memorandum, in terms of never having been raised at the trial and coming up thereafter.

THE COURT: Mr. Cleveland, did you ever discuss the matter with Mr. Themilis yourself?

MR. CLEVELAND: Yes, I have, Your Honor, on three occasions.

THE COURT: And he verified what your client told him?

MR. CLEVELAND: Yes, he did.

THE COURT: Mr. O'Neill?

MR. O'NEILL: One last point, we think it is somewhat noteworthy. The statement contained in the Motion, which I have no question Mr. Cleveland is reciting what he has been told, but we think Mr. Themilis indicated just somewhat similar, but there is no evidence. We think it is encumbant that we should be presented to the Court in Affidavit form.

MR. CLEVELAND: I would be glad to put Mr. Themilis on the stand for such as Affidavit.

THE COURT: I think he is talking of an Affidavit from Mr. Themilis, not Mr. Panteleakis. Mr. Cleveland, the Court has carefully considered your Motion. It is a serious Motion, and is of the opinion if should be denied. The Court simply does not think that there was any evidence of coercion as far as the offense was concerned, and for reasons pretty well covered by the United States in its Memorandum thinks the Motion should be denied on the basis of the newly discovered evidence. You, of course, may have an exception.

MR. CLEVELAND: Thank you, Your Honor.

THE COURT: Any reason why sentence should not be imposed on your client at this time?

(Transcript, Page 9)

A. That is part of it, yes, sir.

Q Isn't that specifically it?

A. Well, yes.

THE COURT. I think we'll take our noon recess at this time, ladies and gentlemen. We'll resume at 1:30. Please don't discuss the case with anybody over the noon hour. We'll stand in recess.

(Court recessed from 12:00 a.m.-1:35 p.m.)

THE COURT. Mr. Bowe.

ROBERT E. BOWE resume the stand for further recross examination.

Q (By Mr. Cleveland) Mr. Bowe, a few more questions. I would like to confine myself and confine your answers to the second interview with Mr. Panteleakis. Is it true that on that occasion he stated that Mr. Kermit White's wife was presently in business with Larry Thibeault at a restaurant and lounge called Arthur's Place in Brattleboro?

A. That is correct.

Q Did he also indicate to you that William Scott and Larry Thibeault threatened to tell the police about bad check charges in Lowell, Massachusetts if he didn't continue supporting them in the motel they were staying at?

A. Yes, sir.

Q Did he further state to you that he understood that the

(Transcript, Page 106)

to Mr. O'Neill's question, he said he used the name Nick Pappas because he was trying to avoid testifying in the federal prosecution, but you didn't feel that was an important event to put in your report?

A. Not in the second report. I already used, as I recall--as I recall, it was done as an excuse for him in the initial; that is the name he was arrested under.

Q And, specifically in that interview, the interview of the first time that you interviewed him directly after his arrest in talking about the name Nick Pappas, I will read to you again "He stated that he had heard he was being sought as a witness in the bond case and would have gone back to Vermont to testify in the case but was afraid to because he had several bad check charges outstanding in Vermont and Lowell, Massachusetts and felt if he appeared in the case the local authorities would come after him while he was testifying". Is that true?

A. That is what he said, yes. That is the way I put it down.

Q And, in your second report about the second interview, you felt it was not necessary to put in any reference to the name Nick Pappas?

A. No, because the reference to Nick Pappas in the beginning, as I mentioned earlier, that it was during the seven or eight minutes that he was more-or-less denying

tomorrow, but at the moment I believe that is it.

THE COURT. The Court has in mind in view of the state court matters whereby Mr. Panteleakis was arrested, as soon as court adjourned yesterday that there has been an extremely limited time for Mr. Cleveland to get together with him. The only difficulty the Court has at this time, if he is going back to Woodstock and try to make bail as to whether you will have any more time.

MR. CLEVELAND. I feel it is important enough to this particular case either I will meet with him, depending on our discussions in chambers after this session, I would meet with him in Burlington or take it upon myself to go to Woodstock. I feel on this particular witness's testimony, our case will rise or fall.

THE COURT. That is fair enough. It is somewhat unusual, but under the circumstances of this matter it will be all right. So we will take our recess at this time and we will meet in chambers. I would like you to get word to the Marshals to keep Mr. Panteleakis in the building until we decide what to do with him, so they will keep him here rather than pushing him down Farrell Street in Burlington.

(End of discussion at the bench)

THE COURT. Ladies and gentlemen, we are going to break early this afternoon and take our evening recess at this time. We'll resume in the morning at 9:30. I ask you

(Transcript, Page 171)

From what I know, Bill told me he paid part of it, so it came out of my money.

Q You didn't make money on the bonds?

A. We made money doing dinner clubs.

Q Bill Scott told you he put in his share, your share, but you don't know anything more than that, do you?

A. As far as where the money came from?

Q Yes.

A. That five hundred dollars?

Q Yes.

A. No.

Q When you spoke to the United States Attorney and F.B.I. and told the testimony you gave here wouldn't be used against you and you wouldn't be prosecuted on the basis of it, you knew what they wanted you to talk about here?

A. When I originally talked to them?

Q Yes.

A. Yes, I knew what they wanted.

Q And, you have known continuously what you were to talk about here, didn't you?

A. Yes.

Q And, you knew your participation in setting up the purchase of these bonds that you wouldn't be prosecuted for that, didn't you?

A. Yes.

Q Did you also know if Nick Panteleakis went to jail you wouldn't have to worry about ever having to defend the fixtures in Arthur's Place?

A. No.

Q Do you recall going down to Pennsylvania just after Christmas to bail out Bill Scott?

A. Yes.

Q Who did you go to for the money for that?

A. Nick.

Q How come?

A. Because he was the only one I felt had it that could get it.

Q You didn't use any of that money you made on the restaurant promotion, did you?

A. Didn't have any, at that time.

Q You made it, but spent it, I guess?

A. We hadn't made money for a long time.

Q I see. You hadn't made money. Did you sell any tickets?

A. I don't believe so.

Q So you stayed there for several weeks, almost a month, total expenses on Nick Panteleakis, and never sold a ticket, is that correct?

A. That is right.

Q Did you suggest to Nick when you went down to bail out Bill Scott if he didn't give you the money that just

(Transcript, Page 210)

perhaps you might tell the police about his bad checks in Lowell, Massachusetts?

A. No.

Q You didn't suggest that to him?

A. No.

Q You didn't suggest perhaps he had better let you use his car and give you the seven hundred dollars and go down and bail out Scott, or you would blow the whistle on him on his bad checks?

A. No.

Q Were you ever involved in an accident in Pennsylvania?

A. No.

Q Ever picked up by the police for speeding traffic violation?

A. No.

Q Your testimony is that you were never picked up in Pennsylvania for speeding, or an accident, and you did not have to produce a license for that?

A. That is correct.

Q And, it would be further your testimony then you did not have to produce a license to the state police in Pennsylvania during this period of time, let's say, from November of 1974 to November of 1975?

A. That is correct.

Q And that you also then didn't show Nick Panteleakis'

(Transcript, Page 211)

license to anybody?

A. In Pennsylvania?

Q Yes.

A. Definitely not.

Q How about in other states?

A. In another state?

Q Yes.

A. At this time?

Q Yes.

A. No.

Q How about any time?

A. About three years before.

Q How did you get his license?

A. He gave it to me.

Q He gave it to you?

A. Yes.

Q Why, because you did not have one?

A. That is correct.

Q He just gave you a license to do, so you could do what you wanted?

A. He had another New Hampshire license and he gave it to me.

Q Did you get into an accident with his car?

A. No.

Q How did you have occasion to show it to the police?

(Transcript, Page 212)

A. He was at some friend's house--I believe it was his car--and we had been out drinking, and we were sitting in the gas station parking lot next to this house and fell asleep and the police cruiser came down and checked us out and one opened the compartment and the license fell out, and they thought I might be Nick. This time they were looking for him. A friend of mine came down to the police station and identified me and said I was not Nick and he took the license with him.

Q Were you involved in a conversation with Nick and Bill Scott shortly after Christmas and the first of the year of 1975 about going to Pennsylvania and getting some money?

A. Between Christmas and the middle of January, Bill Scott wasn't around.

Q Was it shortly after the middle of January?

A. I wasn't involved in the situation. I knew Nick and Bill went there to get some money.

Q Do you know why they went down to get money?

A. Bill was supposed to have a rich friend down there.

Q Why was the rich friend going to give Nicky some money?

A. Bill was supposed to get the money to finance the restaurant in Fitchburg.

Q It wasn't because of the expenses that Nick had put out on your behalf that Nick wanted money, was it?

A. Not to my knowledge.

Q Did you issue him a check for fourteen hundred dollars on January 9, 1974 that bounced?

A. Drawn on which bank?

Q Bank & Trust Company of Old York Road, Willow Grove, Pennsylvania?

A. I don't remember.

Q In fact, would it be fair to say you issued a number of checks to Nick for a considerable amount of money that did bounce? Would that be fair to say?

A. No, I don't believe so.

Q Did you ever issue one for fourteen hundred dollars?

A. I don't remember.

Q Could it have been that much?

A. I don't remember.

Q Could it have been more?

A. I don't remember.

Q How about one for thirteen hundred seventy-five dollars?

A. Drawn on which bank?

Q Drawn in early January, 1975, endorsed by Nick and put through the Bellows Falls Trust Company?

A. And, the bank it originated from?

Q Thompson Realty Trust.

A. No.

Q Isn't it true that after four weeks of staying on Nick, your staying in the motel and his paying for it, you

(Transcript, Page 214)

...using his coat, he paying for the pay telephone, he was
...he paying for the using the telephone, he paying
for it without selling any tickets, and it was your recall
only you never did list up for seven hundred dollars, he
call out Bill Scott, using his car, and he never com-
plained to you about the money you were charging up and
he wasn't upset?

A. It was a thousand dollars, and he gave it to me
willingly.

Q And, you didn't suggest to him if he didn't give you the
money, you would tell about the bad checks and he could
be arrested in Lowell?

A. No, I didn't.

Q Do you recall giving Nick a check for eight hundred ten
dollars, dated January 29, 1978 drawn on the Philadelphia
National Bank?

A. No.

MR. CLEVELAND. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) I spoke with you and also Special Agent
Axten of the F.B.I. with respect to this case back in
January?

A. Yes.

Q And, that was following discussions between myself and
your lawyer?

Q Did he ask you if you wanted to get involved?

A. I just don't remember. I don't think so.

Q Just so we understand, Mr. Strahan, is it a matter of your testifying he didn't do this, or you don't recall at this point in time? How would you describe it in that respect?

A. I don't recall.

Q Were your recollection of these events better when you testified before the grand jury earlier this year?

A. Probably was.

Q Would you have made a statement at that time with respect to something that happened if, in fact, it wasn't true?

A. I don't think I would, no. I had no reason to.

Q And, if you didn't recall something at that point in time, would you have stated you didn't remember?

A. Yes.

MR. O'NEILL. I think that is all we have at this time, your Honor.

THE COURT. Anything further, Mr. Cleveland?

MR. CLEVELAND. May I have a moment, your Honor?

THE COURT. Yes.

RE CROSS EXAMINATION

Q (By Mr. Cleveland) Did you even bail Larry Thibeault out of jail?

A. Yes.

(Transcript, Page 235)

Q Did he ever have a phone conversation with you relative to bailing him out of jail?

A. Yes.

Q Did he say that he would involve you in this bond matter if you didn't bail him out?

A. That is right.

MR. CLEVELAND. Thank you. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) What was the denomination of the bond you looked at?

A. I don't know.

Q Do you have any recollection of it?

A. I think it was a one hundred dollar one, but I don't know for sure.

Q Have you seen Mr. Panteleakis from time-to-time?

A. Have I seen him?

Q In recent times.

A. Yes.

Q Would it be fair to describe him as a friend of yours?

A. Yes.

MR. O'NEILL. That is all we have, your Honor.

MR. CLEVELAND. Nothing further.

THE COURT. You may step down, Mr. Strahan.
Counsel come to the bench, please.

(Transcript, Page 236)

guess, and then disappear. I never see him again, but the last time, he called me in Brattleboro.

Q And, how long before December of 1974 did he disappear from Lowell? How many months?

A. About four or five months, I guess.

Q And, at the time he disappeared, was he paid up?

A. Oh, yes.

Q When was the next time you heard from him?

A. I received a telephone call at the Maverick Restaurant, so somebody told me someone want me on the phone.

I answer the telephone and he says "Hi, Pappy"--he always call me by the name Pappy. I realize that is him because he is the only one that call me by that name. I ask "Larry, that is you"? He says "Ya." I says "What you doing". He says "I'm in a big advertisement promotions business with Scott." He says they do promotion places and so forth and "we come down there to promote your business."

Q Did you ask him to come?

A. No, but I say to him "I do not need no promotion because I don't need no promotion. I am doing all right, but I am glad you are doing all right down there". That is the last conversation with Larry Thibeault through the phone.

Q When was the next time you saw him?

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A. Three or four week after that they walk in the Maverick. He walk in the Maverick with Bill Scott; both of them.

Q They just arrived?

A. Just arrived.

Q And, what did they say to you at that time?

A. Larry says to me "Bill, that is Nick; Nick, that is Bill". I says "Nice to meet you" and everything else. They start to ask me a lot of questions how I am doing there, this and that. Then he ask me where is a good place to stay, so I referred to him they can go to the Stone Fence Motel next to the restaurant.

Q Did they attempt to get you to sign a contract?

A. Yes, not right away. The day after, they call me in the office and they say "We can make a lot of money for you". I say "Ya, how". They take one contract and he says "You sign this paper here and we go to work on it". Of course, the first day they go in the bar and show hundred dollar bills, impress the waitresses, leave ten dollar tips and everything else. So, I listen to him, see what they are talking about. So they talk about the dinner club. To start with, I though maybe this dinner club, the credit cards we honor a lot of them a lot of times in the restaurant. This is not the Diners' Club. It is the dinner club. They are supposed to install

telephones at Stone Fence Motel, put in the phones, call all the people in houses to buy that card; buy the card for twenty dollars, get twelve free meals. Well, they put up signs in the place and the phone and talk to Pete, the man that owns the motel, or manages the motel. So they come to put a telephone system inside their rooms. I start thinking about it, tried to figure what it is all about. Well, what boils down to it, the average husband-wife business buys the card for twenty dollars; they take the twenty dollars for the card allowing for the people for twenty dollars to go for a whole year.

Q You say they take the card. Who do you mean?

A. The customers. The housewife buys the card for twenty dollars because they save twelve meals; get the twelve meals free, but the twenty dollars, they are not going to the house. They go to Scott Promotion Company, or however you call it. Of course, they talk to Scott and they take over and I stay behind for a year caring for the people.

Q You would be responsible for the meals?

A. Exactly. So, I talk to Pete. I say "No, don't put in the telephones; no do it; that never going through. That advertisement isn't going through because I don't let it go through."

Q Did you, in fact, refuse to sign the contract?

A. Of course, I don't.

Q Did you tell people you did not want the promotion?

A. I done that, ya.

Q Nov there was some tesimony they stayed for almost four weeks.

A. They stay more than that, not just four weeks. They drink free, eat free and any time I say they drink free, drink a bottle of liquor, each one. Larry drink Jack Daniels; Billy drank Black Velvet. That went on for weeks.

Q You paid for all of that?

A. Yes.

Q Did you pay for the motel room?

A. Yes, sir.

Q Did you pay for the phone bill?

A. Yes, sir, I done it.

Q Did you pay for the food and liquor?

A. Yes.

Q Why did you let them stay?

A. Well, Larry, he know about me and he is the type of person he lets you understand things, how they go. He knew I would be wanted down in Lowell, Massachusetts for labor violations, for outstanding checks. He knew they were looking for me, for my arrest, because his father and brother, they got the same thing there, and if I don't please him, the only thing he has to do is pick up

that phone. He says "Well, you are looking for Nick? Nick is at Maverick Restaurant in Brattleboro". What happens if that happened. I got to go to the courts; I go probably to jail. I have no money to make restitution to the people who have the money coming, so if I say to him "Get out, stay away from me," I face the danger to be in trouble with the law. If I find way out of it and close the place, I go to have a difficult problem to raise my family. See, I have sixteen years old daughter mentally retarded in a hospital in Newington, Connecticut, and I have another three kids. The wife can't go to work. Who is to take care of the kids? I have to provide a living. So, I put up with them to that point. I put up with them and tried as best I knew how. I used to say I hope they get away, out of here and leave me alone. That never happened.

Q Did there come a time when Larry Thibeault made certain requests about bail money for Bill Scott?

A. Well, I understand Bill Scott, he leaves Vermont to go south, Philadelphia, Virginia or Philadelphia to get his clothers, plus money he has coming. I think he left by plane. A few days later, Larry calls me in the office and says "Pap, what happened, I got to have one thousand dollars." "You have to have one thousand dollar," I say. He say "Ya". "What you want one thousand dollars for?"

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He says "Bill is in jail down in Philadelphia". I says "I got no one thousand dollars". He says "You find it. You find them, I talk to you a little bit later". So he left. He see me after maybe half an hour, go to the office and come inside. Again, he demanded one thousand dollars and keys to my car to go to Philadelphia to get Bill, and he says to me "How do you like it to be in jail? You can go there, you know," he says to me. So, I got the message. I knew what it was all about. I borrowed six hundred dollars from Strahan and four hundred dollar out of the cash register and I give him the car key, and he go and go after Bill.

Q Now during this period of time; that is, December of 1974, you have heard testimony in this courtroom regarding bonds?

A. Yes, sir.

Q Would you explain to the jury exactly how you first came to see anything having to do with bonds in the Maverick Restaurant?

A. Well, to run a restaurant is not an easy thing to do, especially if you have alcohol. To let you have a picture of it, Thursday, Friday, Saturday night, you have inside six, four, or one hundred kids and you have a rock band with seven pieces. You have three waitresses, cocktail waitresses, man at the door to take the money. He has to

(Transcript, Page 267)

you find somebody is killed or I go out of business.

So I try to mind my own business. I stay away from other people's affairs if it has no effect on my business.

That happened, I knew what was going on there.

Q Did you, at any time, pay any money to anybody for the purchase of those bonds?

A. No.

Q Did you give any money to Bill Scott for the purchase of those bonds?

A. No. I hear all this testimony, what they say here. That is not true. I never give him nothing. I never be involved in anything, except I knew what is going on.

Q Now, subsequent to Christmas of 1974 in the early part of January, is that when William Scott was down south in Pennsylvania?

A. I think so.

Q And, at that time, Larry Thibeault requested you give him one thousand dollars and the keys and use of your car?

A. Yes, that is true.

Q Did he indicate anything to you why you should pay that money?

A. Well, it was obvious as black and white, if I didn't come up with the money, I go to jail.

Q For what purpose?

A. He knew everything about me. In Lowell, he knew they

to to the hotel and say to Pete "Don't let them put in telephones, they try to give me the business." So that one is killed right there. No such a thing, but that isn't why they come, not to help me; to help themselves. So, no one card sold in Maverick Restaurant because I don't want to.

Q The dinner club they talked about was all talk and never cost you any money?

A. No, not the dinner club cost me no money at all.

Q They stayed over there at the Stone Fence and ate your food and drinks, and it is your testimony they did so was basically they were blackmailing you?

A. Boiling down to it, yes.

Q Isn't that what it is?

A. Yes.

Q But, you don't turn them over to the police?

A. What is the difference?

Q You don't turn them over to the police?

A. How can I do this?

Q You didn't turn them into the police?

A. No, sir.

Q Who owned the fixtures at the Maverick?

A. I did.

Q Who did you pay? Who did you buy them from?

A. Not money transactions. My investment on the Circle